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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/633,476	08/07/2000	Mark C. Terranova	5181-60700	4639

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EXAMINER

BRUCKART, BENJAMIN R

ART UNIT	PAPER NUMBER
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2155

DATE MAILED: 07/24/2003

6

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/633,476

Applicant(s)

TERRANOVA ET AL.

Examiner

Benjamin R Bruckart

Art Unit

2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☒ Claim(s) 1 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) ____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Detailed Action

Claims 1-24 are pending in this Office Action.

Information Disclosure Statement

The information disclosure statement filed in Paper No. 12 has been considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "said second client" in claim 1, line 16. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 7, 8, 10, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,154,744 by Kenner et al.

With regards to claim 1, a system comprising: a server (col. 5, lines 44-50); a first client coupled to said server (col. 5, lines 44-50); wherein said server is configured to login a first user and a second user (col. 9, lines 40-45), wherein said first client is configured to execute a first instance of a test program by said first user and a second instance of said test program by said second user substantially concurrently (col. 7, lines 3-6), wherein said first instance of said test program is configured to cause a first access to a first file on said server, wherein said second instance of said test program is configured to cause a second access to a second file on said server (col. 5, line 23), wherein said first client is configured to store a first latency value associated with said first access, wherein said second client is configured to store a second latency value associated with said second access (col. 11, lines 15-23).

With regards to claim 2, a system related to claim 1, wherein said server is configured to verify that said first user has permission to access said first file in response to said first access (col. 9, 40-44).

With regards to claim 4, a system related to claim 1, wherein said first user corresponds to a first user type, and wherein said second user corresponds to a second user type (col. 16, 62-67; col. 17, lines 1-5).

With regards to claim 7, the system related to claim 1, further comprising a second client coupled to said server; wherein said server is configured to login a third

user, wherein said second client is configured to execute a third instance of said test program by said third user substantially concurrently with initiating said first instance of said second instance (col. 5, 23; col. 7, lines 3-6), wherein said third instance of said test program is configured to cause a third access to a third file on said server, and wherein said second client is configured to store a third latency value associated with said third access (col. 11, lines 15-23).

With regards to claim 8, the system related to claim 7, wherein said server is configured to verify that said third user has permission to access said third file (col. 9, lines 40-44).

With regards to claim 10, the system related to claim 1, wherein said server is configured to login said first user using a first operating system protocol, and wherein said server is configured to login said second user using a second operating system protocol (col. 8, lines 5-10).

With regards to claim 14, the system related to claim 1, wherein said first access comprises a first read access or a first write access, and wherein second access comprises a second read access or a second write access (col. 3, 28-33).

The examiner finds the claims 1, 15; 2, 16; 4, 18; 10, 21; 14, 24 to be synonymous in intention. While the examiner recognizes the distinction between a system and a method, the examiner relates these to the code, the functions, and medium for which the code works. Therefore claims 15, 16, 18, 21, 24 are also rejected

under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 6,154,744 by Kenner et al.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3, 9, 11, 12, and 13 are rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 6,560,648 by Dunn et al.

The Kenner reference discloses a set of programs run within the configuration utility to determine the latency of the network. The Kenner reference indicates ping and trace-route programs are used in this manner but does not clearly state how the data is processed to produce results.

The Dunn reference discloses that using a ping command could approximate a total time for a token message to travel round-trip across the network (Dunn: col. 1, lines 38-46).

The Dunn reference further teaches that ping commands are high priority, small size messages that travel quickly through routers (Dunn: col. 2, lines 6-8) allowing to measure message communication latency across a network (Dunn: col. 2, lines 49, 50).

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the system taught by Kenner with specific uses of the PING command as taught by Dunn to measure the network latency.

Claims 3, 9, 11, 12 and 13 are rejected under the same rationale given above. In the rejections set forth, the examiner will address the additional limitations and point to the relevant teachings of Kenner et al and Dunn et al.

With regards to claim 3, a system related to claim 2, wherein said first latency value represents a first time portion corresponding to said first access and a second time portion corresponding to said server verifying said first user has permission to access said first file (Dunn: col. 1, lines 38-46).

With regards to claim 9, the system of claim 8, wherein said third latency value represents a first time portion corresponding to said third access and a second time portion corresponding to said server verifying said third user has permission to access a third file (Dunn: col. 1, lines 38-46).

With regards to claim 11, the system related to claim 1, wherein said server is configured to convey a first token to said first client in response to logging in said first user, and wherein said server is configured to convey a second token to said first client in response to logging in said second user (Dunn: col. 1, lines 52-56).

With regards to claim 12, the system related to claim 11, wherein said server is configured to verify that said first user has permission to access said first file in response to said first access using said first token, and wherein said server is

configured to verify that said second user has permission to access said second file in response to said second access using said second token (Dunn: col. 1, lines 52-56).

With regards to claim 13, a system related to claim 1, wherein said first instance of said test program is configured to cause a third access to a third file on said server, wherein said second instance of said test program is configured to cause a fourth access to a fourth file on said server, wherein said first client is configured to store a third latency value associated with said third access, and wherein said second client is configured to store a fourth latency value associated with said fourth access (Dunn: col. 1, lines 38-46).

Claim 5 is are rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 5,485,606 by Midgdey et al.

The Kenner reference discloses a system of network latency tests that will test connectivity and load of a server and verify a user, then allow access to a file. The Kenner reference does not explicitly explain file manipulation or directory access for a user.

Midgdey reference teaches a system related to claim 4 (Midgdey: abstract), wherein server is configured to create a first directory for said first user (Midgdey: col. 7, lines 27-39), wherein said server is configured to populate said first directory with a first plurality of files according to said first user type, wherein said first plurality of files includes said first file (Midgdey: col. 9, line 62 – col. 10, line 12), wherein server is

configured to create a second directory for said second user (Midgdey: col. 7, lines 27-39), wherein said server is configured to populate said second directory with a second plurality of files according to said second user type, and wherein said second plurality of files includes said second file (Midgdey: col. 9, line 62 – col. 10, line 12).

The Midgdey reference further teaches that this method of file backup and restoration is usable with any operating system (Midgdey: col. 2, lines 7-11).

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the system taught by Kenner with directory creation and file population techniques as taught by Dunn to create test directories that can be restored on any operating system to be tested.

Claim 6 is rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 5,485,606 by Midgdey et al in further view of U. S. Patent No. 6,138,112 by Slutz.

The Kenner reference discloses a system of network latency tests that will test connectivity and load of a server and verify a user, then allow access to a file. The Kenner reference does not explicitly explain file manipulation or directory access for a user. The Midgdey reference explains a system independent of operating system for backing up and restoring directory and file information. The Midgdey reference does not explicitly state a random sorting method in which the files may be copied into a directory can be ordered.

The Slutz reference describes a dynamic testing method for databases based upon a seed given seed value.

With regards to claim 6, the system of claim 5, wherein said first instance of said test program is configured to identify each of said first plurality of files in said first directory, wherein said first instance of said test program is configured to create a first order of said first plurality of files using a first seed value (Slutz: col. 4, lines 55-57), wherein said second instance of said test program is configured to identify each of said second plurality of files in said second directory, and wherein said second instance of said test program is configured to create a second order of said second plurality of files using a second seed value (Slutz: col. 4, lines 55-57).

Slutz further teaches that it can be used like a random number generator, similar to a sequence generator, so that the same configuration settings, the same schema, and same starting seed will reproduce it (Slutz: col. 4, lines 62-67).

Therefore it would have been obvious to a person of ordinary skill in the art at the time the invention was made to implement the system taught by Kenner and Midgley with random number or sequence generation based upon start seed values as taught by Slutz is great random sequences for testing that can be reproduced.

The examiner finds the claims 3, 17; 5, 19; 6, 20; 11, 22; 12, 23 to be synonymous in intention. While the examiner recognizes the distinction between a system and a method, the examiner relates these to the code, the functions, and medium for which the code works.

Therefore claims 17, 22 and 23 are rejected under 35 U. S. C. 103(a) which forms the basis for all obvious as being unpatentable over U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 6,560,648 by Dunn et al.

Claim 19 is rejected under 35 U. S. C. 103(a) as being anticipated by U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 5,485,606 by Midgdey et al.

Claim 20 is rejected under 35 U. S. C. 103(a) as being anticipated by U.S. Patent No. 6,154,744 by Kenner et al in view of U.S. Patent No. 5,485,606 by Midgdey et al in further view of U. S. Patent No. 6,138,112 by Slutz.

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U. S. Patent Pub No. 2002/0147969 issued to Lethin et al.

U. S. Patent No. 6,321,264 issued to Fletcher et al.

U. S. Patent No. 5,355,497 issued to Leon Cohen- Levy.

U. S. Patent No. 6,269,401 B1 issued to Fletcher et al.

U. S. Patent Pub No. 2002/0026321 A1 issued to Faris et al.

Conclusion


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Benjamin R Bruckart whose telephone number is (703) 305-0324. The examiner can normally be reached on 8:30-5PM.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hosain Alam can be reached on (703) 308-6662. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-0324.

Benjamin R Bruckart
Examiner
Art Unit 2155

brb 
July 21, 2003


HOSAIN T. ALAM
PRIMARY EXAMINER